

### **REMARKS**

Reconsideration and withdrawal of the rejections set forth in the Final Office Action of April 12, 2011, are respectfully requested in view of this amendment. By this amendment, claims 33, 47, 50, 56 and 64 have been amended. Claims 33-43, 45-47, 49-56 and 58-64 are pending in this application and presented for examination.

By this amendment, claims 33, 47 and 56 have been amended to describe the receiving device, based on at least one definition, stored in a memory, of a predefined set of pieces of activity information selected from the measured sports activity information. Claims 33, 47, 50, 56 and 64 have been amended to describe use of a standard communication interface connection. Claims 33, 47, 50, 56 and 64 have been amended to describe using the standard communication interface to provide a capability to provide said display size, durability and usability according to the characteristic of said one activity.

Finally claims 33, 47, 50, 56 and 64 have been amended to specify "at least one activity" instead of "sailing".

It is respectfully submitted that the above amendments introduce no new matter within the meaning of 35 U.S.C. §132.

In the Final Office Action, claims 33-43, 45-47, 49-56, and 58-64 were rejected under 35 U.S.C. §103(a) as unpatentable over U.S. Patent Application Publication No. 2003/0065257 to Mault et al. (hereinafter *Mault '257*) in view of U.S. Patent No. 6,513,532 to Mault et al. (hereinafter *Mault '532*), U.S. Patent No. 6,736,759 to Stubbs et al. (hereinafter *Stubbs*), U.S. Patent No. 7,056,265 to Shea et al. (hereinafter *Shea*) and U.S. Patent No. 6,013,007 to Root et al. (hereinafter *Root*). These rejections, as applied to the revised claims, are respectfully traversed.

### **Final Rejection Improper**

Applicants respectfully submit that the Final status of presently outstanding Office Action is improper. Specifically, the claims were rejected on the art of record, but not on the

same grounds. To the contrary, the grounds for rejection were specifically withdrawn (§7 of the Final Office Action) and new grounds for rejection were made. These new grounds were specifically made in view of a different interpretation of the references. In other words, a clear issue was developed between the examiner and applicant, the clear issue resolved and new grounds for rejection were issued.

MPEP §706.07(a) states:

706.07(a)Final Rejection, When Proper on Second Action

... Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement ...

MPEP §706.07(a) further sets forth standard paragraph 7.40.01, Note 1:

Examiner Note:

1. This form paragraph should not be used and a final rejection is improper where there is another new ground of rejection introduced by the examiner which was not necessitated by amendment to the claims.

U.S. Patent No. 6,013,007 to Root et al. was cited in the Office Action of February 26, 2010, but withdrawn in the Office Action of December 22, 2010. This patent is cited again in the currently outstanding Office Action.

The new grounds were not necessitated by amendment, except for the fact that the amendment properly overcame the previous grounds for rejection. In other words the new grounds were not "necessitated by applicant's amendment of the claims". (MPEP §706.07(a).)

### **Rejections under 35 USC §103**

The rejections under 35 U.S.C. §103(a) are traversed on the legal basis as set forth in Applicants' response of May 26, 2010.

*Mault '257* is acknowledged as not describing selecting, based on the sport in question, from the received sports activity information a predefined set of pieces of sports activity

information with the receiving device. There is no showing in either reference of the use of the transmitter and receiver as a universal monitoring engine to drive a sport-specific display, "wherein the receiving device provides different user interfaces in different sports or activities, according to the use or purpose of the information for the different sports or activities." Instead, *Mault* '532 is cited as showing relationships between activity level and that heart rate correlates with body activity and expenditure. The rejection under 35 USC §103(a) alleges that it would have been obvious to include a predefined set of pieces of sports activity information with the receiving device during a particular activity and/or predefined sport. This assertion fails to meet the *KSR* test because the use of the receiving device to provide, "different user interfaces in different sports or activities, according to the use or purpose of the information for the different sports or activities," is not a mere design step (not "a design step well within the grasp of a person of ordinary skill in the relevant art").

In this regard, *Mault* '257 specifies that the display is on the monitoring device and is toggled to provide different indications. This is different from providing a monitoring device and providing different displays in order to provide sports monitoring equipment for different uses.

In order to further distinguish the present subject matter, the claims have been amended to specify the use of a receiving device which is adapted for particular applicability by use of data based on at least one definition, stored in a memory, and providing a user interface display according to the sport in question. This is set forth in the claims:

... wherein the receiving device provides different user interfaces ... according to the use or purpose of the information for ... different sports or activities; selecting ... a predefined set of pieces of sports activity information with the receiving device based on at least one definition, stored in a memory, of a predefined set of pieces of activity information selected from the measured sports activity information... the user interface display comprises activity-specific information according to the sport in question ... . (Claim 33; claims 47, 50, 56 and 64 similar.)

It is submitted that neither *Mault* '257 nor *Mault* '532 show or suggest Applicants' subject matter as now claimed. In particular, both *Mault* references fail to teach the methodology of

selecting for transmitting the sport activity feedback to the receiving device. In other words, both *Mault* references fail to teach or suggest that a set of information to be displayed can be tailored for different needs, e.g., different sports. Thus, it is clear that *Mault's* PDA provides physiological information *regardless of* the sport in question. In contrast to the teachings of *Mault*, the present subject matter requires that the selection of information be "based on the sport in question."

With reference to the individual *Mault* references, *Mault* '257 is acknowledged as not describing selecting, based on the sport in question, from the received sports activity information a predefined set of pieces of sports activity information with the receiving device. There is no showing in either *Mault* reference of the use of the transmitter and receiver as a universal monitoring engine to drive a sport-specific display, "wherein the receiving device provides different user interfaces in different sports or activities, according to the use or purpose of the information for the different sports or activities." Instead, *Mault* '532 is cited as showing relationships between activity level and that heart rate correlates with body activity and expenditure. This still does not suggest the use of a common control unit to provide activity-specific display information through an activity-specific display device ("whereby the standard communication interface provides a capability to provide said display size, durability and usability according to the characteristic of said one activity").

*Stubbs* is used to show the use of activity-specific information, including GPS location data. *Shea* is used to show a device used for multiple activities.

*Root*, applied in an earlier Office Action, is used to suggest that GPS can be used to show current location and navigation instructions. *Root* further fails to teach or suggest the use of a radio link to transmit information, and further fails to show or suggest providing a display, "based on the sport in question, from the received sports activity information a predefined set of pieces of sports activity information with the receiving device." In contrast, *Root* only uses an integrated measurement device that also provides feedback. Since *Root* already uses an

integrated measurement device to provide feedback there is no reason to use a separate device for providing feedback, and thus *Root* actually teaches away from the present claims.

As a result, there is no showing that a single set of measured information can be used to provide information which is selected at the display or feedback device.

The above references show individual features but fail to show the basic concept of using a common receiving device that provides different user interfaces in different sports or activities, a definition, stored in a memory, of a predefined set of pieces of activity information selected from the measured sports activity information, a standard communication interface connection and a on a user interface display selected based on the sport in question. Thus the basic configuration, not including the display and sensors, functions for multiple sports and multiple types of displays, but the unit with the display and definitions stored in memory are dedicated units providing information for a particular type of activity.

The rejection under 35 USC §103(a) alleges that it would have been obvious to include a predefined set of pieces of sports activity information with the receiving device during a particular activity and/or predefined sport. This assertion fails to meet the *KSR* test because the use of the receiving device to provide, "different user interfaces in different sports or activities, according to the use or purpose of the information for the different sports or activities," is not a mere design step (not "a design step well within the grasp of a person of ordinary skill in the relevant art"). In this regard, *Mault* '257 specifies that the display is on the monitoring device and is toggled to provide different indications. This is different from providing a monitoring device and providing different displays in order to provide sports monitoring equipment for different uses by use of activity-specific display units ("a user interface display selected based on the sport in question"). Furthermore, this feature is neither shown nor suggested by *Mault* '532, *Stubbs*, *Shea* and *Root*.

Applicants respectfully submit that the *Mault '257, Mault '532, Stubbs, Shea and Root* references do not teach or suggest all the features as recited in claims 33, 47, 50, 56 and 64 of the present application. It is therefore respectfully submitted that the rejection under 35 U.S.C. §102 should be withdrawn.

**Claims 34-43, 45, 46, 49-55 and 58-63**

Claims 34-43, 45, 46, 49-55 and 58-63 are written in dependent form and depend from claims 33, 47, 50 or 56. Those dependent claims should be allowable for at least the same reason that claims 33, 47, 50 and 56 are allowable.

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**CONCLUSION**

In light of the foregoing, Applicants submit that the application is in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicants respectfully request that the Examiner call the undersigned.

Respectfully submitted,  
**THE NATH LAW GROUP**

July 16, 2011

THE NATH LAW GROUP  
112 South West Street  
Alexandria, VA 22314-2891  
Tel: 703-548-6284  
Fax: 703-683-8396

/Stan Protigal/  
Jerald L. Meyer  
Registration No. 41,194  
Stanley N. Protigal  
Registration No. 28,657  
Customer No. 20529